

NOTICE

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2013 IL App (5th) 110439-U

NO. 5-11-0439

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Montgomery County.
)	
v.)	No. 11-CF-97
)	
JASON A. STAGNER,)	Honorable
)	Kelly D. Long,
Defendant-Appellant.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Welch and Wexstten concurred in the witness.

ORDER

¶ 1 *Held*: Sufficient evidence was presented at trial to prove defendant guilty beyond a reasonable doubt of two counts of harassment of a witness.

¶ 2 A jury in the circuit court of Montgomery County convicted defendant, Jason A. Stagner, of violating an order of protection and two counts of harassment of a witness. Defendant was sentenced to three concurrent six-year terms of imprisonment in the Department of Corrections. The issue raised in this direct appeal is whether there was sufficient evidence presented at trial to prove defendant guilty beyond a reasonable doubt on the two counts of harassment of a witness. We affirm.

¶ 3 **FACTS**

¶ 4 On February 19, 2011, defendant was arrested for domestic battery and jailed. The complaining witness was defendant's wife, Tabitha Ross (Ross). On February 22, 2011, Ross obtained an emergency order of protection against defendant. The order was in effect until

March 14, 2011, when a hearing was to be conducted on a plenary order of protection. Defendant was ordered to "refrain from both physical presence and nonphysical contact with [Ross] whether direct[]or indirect (including, but not limited to, telephone calls, mail, email, faces, and written notes)."

¶ 5 On February 20, 2011, defendant telephoned Ross from jail. From February 25, 2011, until May 20, 2011, defendant called Ross 16 additional times. All inmates' calls are automatically recorded and documented and can be traced to a specific inmate. On June 6, 2011, defendant was charged by information with seven counts of harassment of a witness (720 ILCS 5/32-4a(a)(2) (West 2008)). Counts I through VII set forth seven phone calls initiated by defendant to Ross which allegedly constituted harassment. Defendant was also charged by information with one count of obstructing justice (720 ILCS 5/31-4(b) (West 2008)) (count VIII) and one count of violating an order of protection due to cellular contact with Ross (720 ILCS 5/12-30(a) (West 2008)) (count IX).

¶ 6 Prior to trial, the State dismissed two of the witness harassment charges, counts IV and VI, as well as the obstructing justice charge (count VIII). An amended count IX was filed regarding violation of the order of protection. A jury trial was conducted on August 30, 2011.

¶ 7 Ross testified that she was 25 years old and had been married to defendant since October 2010. She married defendant after an eight-month courtship. She has two children, ages 4½ and 9 months. Defendant is the father of her younger child. At the time of trial, Ross was living in Texas where her family resides.

¶ 8 Ross became a potential witness against defendant after he was arrested for domestic battery and she obtained an emergency order of protection against him. Between February and March 2011, while defendant was incarcerated following his domestic dispute with Ross, Ross answered 17 phone calls made by defendant from jail. She said she probably received

at least 25 calls from defendant, but she did not answer all of his calls. Ross explained her reasons for accepting 17 phone calls as follows:

"At the beginning, it was the grief of loss of the relationship, the loss of a father for my young child. And then when I rejected a few of them and received another one, it was out of fear and the way he would treat me and accuse me of things that weren't happening. I remember one occasion, I rejected it two times because I was taking care of my young baby, and the third time I answered, I was accused of being physical with another man."

Ross identified People's Exhibit 3, the emergency order of protection she received after a physical domestic dispute with defendant.

¶ 9 Ross testified that she did not show up for a subsequent hearing to extend the order of protection "because [she] was already going back to Texas, and [she] could receive one from Texas." She said after she received the emergency order of protection, she lived in a hotel for approximately 10 days and then lived in a shelter in Decatur. After she received a tax refund, she had sufficient means to travel to Texas, so she left Illinois and returned to Texas. Ross described the nature of defendant's 17 phone calls as "angry." She said, "Some of them were blaming upon me, some of them were manipulating, and some were, I guess, an attack at my character." She explained why the calls were difficult for her to deal with: "[O]bviously, this was a man that I fell in love with. And to be called the things that I was called and to be accused of the things that I had been accused of that had not happened were very hard to hear." As of the time of trial, Ross was no longer in love with defendant. She explained that she realized in approximately April 2011 that she was no longer in love with him.

¶ 10 Ross identified People's Exhibit 2 as an audio CD of the 17 taped phone calls. Ross explained that once she moved back to Texas, it was easier to know if a phone call was from

defendant because the area code of 217 would alert her that it was from him. She said defendant always identified himself once she answered the phone.

¶ 11 On cross-examination, Ross admitted that when she received a phone call from defendant, there was always a prompt which asked her whether or not she would accept the call, and, in order to accept the call, she would have to press a number on her cell phone. Therefore, on all 17 occasions, she knew it was defendant who was calling her. She also admitted that she put money on defendant's books at the jail which allowed him to purchase phone cards which he used to call her. She never called the sheriff's department to disclose that defendant was calling her and never requested that the sheriff get defendant to stop calling her.

¶ 12 Craig Foster, the Montgomery County jail administrator, testified about the telephone recording system used at the jail to record all outgoing calls. Foster identified People's Exhibit 1, a list of calls made to Ross's phone by defendant from jail, as well as People's Exhibit 2, the audio CD of the 17 recorded phone calls.

¶ 13 By stipulation of the parties, the jury was informed that (1) Ross was a potential witness in a legal proceeding involving defendant between the dates of February 20, 2011, and May 31, 2011; (2) the recorded conversations in People's Exhibit 2 involved Ross and defendant; and (3) People's Exhibit 4 is a proof of service or affidavit of service showing that defendant was served with an emergency order of protection. The audio CD of the 17 phone calls was played for the jury. While only five of the phone calls were the subject of criminal charges, the defense wanted the jury to hear all of the calls.

¶ 14 During deliberations, the jury sent out a request for clarification regarding the harassment instruction and whether it was necessary that all four propositions in that instruction were proven and whether the term "mental anguish" was defined. With agreement of the parties, the judge readvised the jury. Ultimately, the jury returned verdicts

finding defendant guilty of harassment of a witness on counts I and V, but not guilty of harassment of a witness on counts II, III, and VII. The jury also found defendant guilty of count IX, violation of an order of protection. Defendant was eligible for an extended-term sentence on the violation of an order of protection conviction due to prior similar class felony convictions. The trial court sentenced defendant to three concurrent six-year sentences in the Department of Corrections. Defendant filed a timely notice of appeal.

¶ 15

ANALYSIS

¶ 16 The issue on appeal is whether there was sufficient evidence presented at trial to prove defendant guilty beyond a reasonable doubt of harassment of a witness. Defendant argues the State failed to prove him guilty beyond a reasonable doubt of the two counts of harassment of a witness of which he was convicted. Defendant contends the trial court failed to prove the essential elements of communicating with intent to harass or annoy and production of mental anguish or emotional distress. The State replies that the evidence was sufficient to prove defendant guilty of harassment of a witness beyond a reasonable doubt. We agree with the State.

¶ 17 When presented with a challenge to the sufficiency of the evidence, it is not the function of the reviewing court to retry the defendant. *People v. Banks*, 161 Ill. 2d 119, 135, 641 N.E.2d 331, 339 (1994). The relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985). It is sufficient if all the evidence, when taken together, satisfies the trier of fact beyond a reasonable doubt of defendant's guilt. *People v. Campbell*, 146 Ill. 2d 363, 380, 586 N.E.2d 1261, 1268 (1992). A reviewing court must allow all reasonable inferences in favor of the prosecution (*People v. Cardamone*, 232 Ill. 2d 504, 511, 905 N.E.2d 806, 810 (2009)) and is not to substitute its judgment for the trier of fact. *People*

v. Robinson, 213 Ill. App. 3d 1021, 1025, 572 N.E.2d 1254, 1257 (1991).

¶ 18 The witness harassment statute provides as follows:

"A person who, with intent to harass or annoy one who has served or is serving or who is a family member of a person who has served or is serving *** as a witness, or who may be expected to serve as a witness in a pending legal proceeding *** because of the testimony or potential testimony of the witness or person who may be expected or may have been expected to serve as a witness, communicates directly or indirectly with the *** witness or person who may be expected or may have been expected to serve as a witness *** in such manner as to produce mental anguish or emotional distress or who conveys a threat of injury or damage to the property or person of any *** witness or person who may be expected or may have been expected to serve as a witness *** commits a Class 2 felony." 720 ILCS 5/32-4a(a) (West 2008).

The statute is silent as to the requisite level of emotional distress but provides that when a defendant with the "intent to harass or annoy" a person protected by the statute communicates with this person, directly or indirectly, "in a such manner as to produce mental anguish or emotion distress," the defendant is guilty of a Class 2 felony. 720 ILCS 5/32-4a(a) (West 2008).

¶ 19 In *Cardamone*, our supreme court rejected the defendant's argument that the terms "mental anguish" and "emotional distress" should be given a narrow definition and found "that the statutory language encompasses negative emotional states that are not necessarily linked to fear of harm to either the person or property of a person protected under the statute." 232 Ill. 2d at 517, 905 N.E.2d at 813. The *Cardamone* court pointed out that the statute itself does not contain limiting language or exceptions, and, therefore, "the statute incorporates a more expansive definition of 'emotional distress' than defendant contends." 232 Ill. 2d at 516-17, 905 N.E.2d at 814.

¶ 20 Here, our review of the record indicates that the State met its burden. Defendant was charged with domestic battery and was in jail awaiting trial. Once defendant was behind bars, Ross obtained an emergency order of protection against defendant. In addition to the two counts of harassment of a witness, defendant was convicted of violation of the emergency order of protection. Defendant has not appealed his conviction for that offense. Defendant stipulated that the 17 recorded conversations were between Ross and him. He also testified that he was served with the emergency order of protection. Therefore, despite knowing that the order prohibited him from contacting Ross in any manner, including telephone contact, he called her at least 17 times between February and March 2011.

¶ 21 Ross testified defendant called her at least 25 times while he was incarcerated. She answered 17 of those calls. In the first call, the subject of count I, defendant begins the conversation by asking, "What are you trying to do?" A few minutes later he screams at Ross that she should "drop the damn charges." During the phone call that is the subject of count V, it is important to note that defendant was calling Ross for the third time that day. Ross was en route to Texas. Defendant begs Ross to turn around and stay in a hotel. Ross specifically tells defendant that her getting him out of trouble again is not going to fix his problems.

¶ 22 Although only 5 of the 17 conversations were the subject of criminal charges, defendant insisted that the jury hear all 17 of the conversations. Defendant believed that by hearing all of the phone conversations the jury would find that the couple was having serious marital discord, not that defendant was harassing Ross or trying to inflict emotional distress due to her potential trial testimony against him. However, the jury found that two of the calls were made with the intent to harass her or inflict emotional distress due to her potential testimony.

¶ 23 Ross specifically testified that defendant was "angry" in the phone calls and that he

was trying to manipulate her and attack her character. Ross admitted that she was still in love with defendant when he made the calls to her. No doubt it was difficult to have defendant scream at her to "drop the damn charges" and to repeatedly refuse to take responsibility for his actions. The jury did not take its job lightly as evidenced by its request for clarification. Given the expansive definition for the term "emotional distress" our supreme court has dictated and taking the evidence in the light most favorable to the prosecution, we find sufficient evidence in the record that Ross suffered the requisite level of emotional distress necessary to support the two convictions for harassment of a witness.

¶ 24 For the foregoing reasons, we affirm defendant's conviction and sentences for harassment of a witness.

¶ 25 Affirmed.